

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.250 OF 1991.

1. Raghunath Fulaji Jadhav
age about 40 yrs. Occ.Agriculturist
Resident of Pangare,
Taluka Karmala,
Dist. Solapur. ..

2. Manohar Shankar Jadhav
age about 25 yrs. Occ:Agriculturist
Resident of Pangare,
Taluka Karmala,
Dist: Solapur .. Appellants.

Vs.

1a) Shri Rajendra Dinkarrao Patil ..
1b) Shahaji Dinkarrao Patil ..
1c) Sambhaji Dinkarrao Patil ..
1d) Simantini Dinkarrao Patil ..
All residing at Shelgaon (Wangi)
Tal.Karmala, Dist: Solapur

1e) Sou.Sarojani Ganpatrao Jagtap ..
R/o. At & Post Bhajagali
Tal.Umarga, Dist: Osmanabad

1f) Sou.Devi Subhashrao Deshmukh ..
R/o. At & Post Pahaner,
Tal.Karmala, Dist: Solapur

1g) Sou.Rambha Shivajirao Patil ..
R/o. At & Post Pande
Tal.Karmala Dist: Solapur

1h) Sou.Sulochana Vijaysingh Bhapkar ..
R/o. Malwadi, Post Hati
Tal.Baramati Dist: Pune.

2. Nishikant Bhimrao Kulkarni ..
age about 38 yrs.
Occ:Agriculturist,
Resident of Pangare,
Talukar Karmala, Dist:Solapur

3. Bhalchandra Bhimrao Kulkarni ..
age about 35 years
Occ:Agriculturist,
Resident of Pangare,
Talukar Karmala, Dist:Solapur

4. Radhabai w/o Bhimrao Kulkarni ..
age about 68 years
Occ: Household work,
Resident of Pangare,

- Talukar Karmala, Dist:Solapur ..
5. Laxmibai Uttamrao Kulkarni
Age about 52 years,
Resident of Kandari,
Talukar Paranda, Dist:Solapur ..
6. Subhadrabai Purushottam Joshi
age about 40 years,
Occ: Household work
Resident of H.No.87,
Mali Galli, Barsi .. Respondents.

Mr.Nitin Jamdar for the appellants.
Mrs.A.R.S.Baxi for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 2ND FEBRUARY, 2007

ORAL JUDGMENT:

1. Challenge in this second appeal under section 100 of the Code of Civil Procedure (for short, "C.P.C.") is to the judgment rendered by the learned Vth Addl. District Judge, Solapur in Civil Appeal No.130 of 1988 reversing the Judgment and order passed by the trial Court by which the suit was dismissed.

2. Brief facts, encompassing the details, which lead to the filing of this appeal, are as follows: The dispute is regarding land Gat No.132 situate at Mouje Bhalvani, Taluka Kamala, District-Solapur admeasuring 3 Hector 43 Ares (for short, "suit property"). The suit property is admittedly the ancestral property of deceased Bhimrao Krishnaji

Kulkarni. Bhimrao sold the suit property by an agreement dated 12th December, 1967 to respondent no.1 for a total consideration of Rs.2500/- . The consideration was paid by respondent no.1 in the form of earnest money of Rs.150/- and two subsequent instalments of Rs.1850/- paid on 30th September, 1968 and Rs.500/- paid on 5th November, 1969. It was agreed by both the parties that the sale deed would be executed within six months of the deceased - Bhimrao obtaining permission from the competent authority under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1950 (for short, "the Act"). Bhimrao died on 10th October, 1979 and till then no permission was obtained from the competent authority. Defendant nos 1 to 5, who are the heirs of Bhimrao, refused to perform their part of the contract and issued notice dated 23rd October 1980. Defendant nos. 1 to 3 subsequently sold the suit property to defendant nos 6 and 7, that is, present appellants, for a consideration of Rs.16000/- by registered sale deed dated 4.7.1981. In the meanwhile, respondent no.1 filed a civil suit no.55 of 1981 for specific performance against the heirs of Bhimrao, that is, defendant nos 1 to 5 and the appellants. The trial Court dismissed the suit vide its judgment and order dated 30.6.1984 and the appeal filed by the respondent-plaintiff was allowed vide judgment and

order dated 2.2.1991, hence this appeal by defendant nos 6 and 7.

3. The reference will have to be made to the suit filed by the heirs of Bhimrao, that is, defendant nos.1 to 5 bearing suit no.160 of 1980. This suit was filed for injunction simplicitor. The trial Court had granted temporary injunction in favour of the heirs of Bhimrao. The plaintiff claim that by virtue of the temporary injunction granted in the said suit the heirs of Bhimrao, namely, Nishikant and Bhalchandra dispossessed the plaintiff. Subsequently, the injunction was vacated. The suit was not prosecuted further. However, the possession was not restored. Thereafter on 4.4.1981 the plaintiff, instituted the present suit. After filing of the suit on 4.4.1981, defendant nos.1 to 3 executed the sale deed in favour of defendant nos.6 and 7 and, therefore, they were added as party defendants in the suit. They were put in possession of the suit property by the defendant nos.1 to 5. The plaintiff, therefore, prayed for possession of the suit property. Defendant nos.6 and 7 claim that they purchased the suit property from defendant nos.1 to 3 for Rs.16,000/- and that they are bonafide purchasers for value without notice.

4. Mr.Jamdar, learned counsel for the appellants

confined his arguments mainly on two points. Firstly, whether the suit is within limitation, and secondly, whether the jurisdiction as contemplated under section 20 of the Specific Relief Act, 1963 has been exercised by the appellate court properly. He submitted that the present case is covered by the first part of Article 54 of the Limitation Act, 1963 and not the second part thereof as held by the appellate court. In support of this submission he invited my attention to the fact that the necessity of obtaining permission of authority under the provisions of the Act was done away with and, therefore, the date for performance of the agreement became ascertainable, that is, six months from the date of amendment. In support of this submission he placed reliance upon the judgment of the Supreme Court in **Ramzan Vs. Hussaini (1990) 1 S.C.C. 104**. Mr. Jamdar invited my attention to section 31 AB of the Act of 1947 to contend that the transactions, such as in the present case, were no longer treated as void and, therefore, the date for performance of the agreement became ascertainable. In other words, he submitted that by virtue of the amendment the requisite permission stood granted by operation of law and the six months period will have to be calculated from the date of amendment. He further submitted that from the conduct of the plaintiff it is clear that he was aware about the amendment and, therefore, he ought

to have filed the suit within three years of the amendment.

5. Mr. Jamdar next submitted that the categories of equitable relief listed in section 20 of the Specific Relief Act are not exhaustive. The appellants has listed relevant equitable considerations. These provisions have not been considered by the appellate court in proper perspective and has overlooked the law settled by High Courts and the Supreme Court. He submitted that delay in approaching the court seeking specific performance was completely overlooked which was relevant consideration under section 20 of the Specific Relief Act. In support of this contention he placed reliance upon the judgment of the Supreme Court in **Manjunath Anandappa URF Shivappa Hanasi Vs. Tammanasa and Others (2003) 10 SCC 390**. He further submitted that the subsequent purchasers are also entitled to contend that the plaintiff was never ready and willing to perform his part of the contract. In support of this contention he placed reliance upon the judgment of the Supreme Court in **Ram Awadh (Dead) By LRs. and Ors. Vs. Achhaibar Dubey and Anr. (2000) 2 Supreme Court Cases 428**. He then submitted that the learned Judge failed to balance the equities in the facts of the present case.

6. Mr.Jamdar also invited my attention to the averments in civil application no.1178 of 2004 filed by the appellants for additional evidence to contend that the relief of specific performance being discretionary the learned Judge ought to have taken into consideration substantial investment made by the appellants in development of the land and that the plaintiff has several lands in their ownership and possession and no hardship will be caused to them if specific performance is denied. In support of his submissions reliance was also placed on the judgments of the Supreme Court in **Parakunnan Veetill Joseph's son Mathew Vs. Nedumbara Kuruvila's son and Others 1987 (Supp) SCC 340, Malapali Munaswamy Naidu Vs. P.Sumathi (2004) 13 SCC 364, A.C.Arulappan Vs. Ahalya Naik, (2001) 6 SCC 600 and Smt.Ranganayakamma Vs. N.Govinda Narayan AIR 1982 Karnataka 264.** Mr.Jamdar also submitted that the appellants are bonafide purchasers of the suit property and they had no notice of either suit filed by the plaintiff or the agreement executed in plaintiff's favour since no entry to that effect was made in the record of rights.

7. Mrs.Baxi, learned counsel for the respondents, on the other hand submitted that by amendment to the Act of 1947 in the year 1977, the condition to seek permission was not done away with as observed by the

courts below. A bare perusal of the provisions of section 31 AB of the Act of 1947 clearly indicate that the restrictions on alienation and sub-division of consolidated holdings as contemplated under section 31 was not deleted as wrongly held by the courts below and, therefore, the case, under any circumstances, would not fall in the first part of Article 54 of the Limitation Act. Mrs.Baxi further submitted that looking to the conduct of defendant nos.6 and 7 as also other defendants an equitable relief under section 20 of the Specific Relief Act cannot be granted. The appellants were very well aware of the agreement and the suit filed by the plaintiff. It was brought to the notice of the appellants in the office of Registrar where the sale deed was executed between the appellants and defendant nos.1 to 5, that is, the heirs of Bhimrao. In support of this submission she invited my attention to the judgment of the Apex Court in **Ram Niwas (Dead) Through LRs. Vs. Bano (Smt.) and Others (2000) 6 SCC 685**. She then submitted that it is not open for the appellants to raise an issue of legal necessity in absence of any evidence in support thereof. She submitted that defendant nos.1 to 5 have failed to bring any material on record either by way of oral evidence or documentary in support of this submission and, therefore, apart from the fact they never made such grievance either in the suit filed by

them bearing suit no.160 of 1980 or by filing independent written statement in the present suit.

8. The submissions of learned counsel on the point of limitation were centered around Article 54 of the Limitation Act. It would be relevant to reproduce Article 54 for better appreciation of the submissions advanced by the learned counsel for the parties. Article 54 of the Limitation Act reads thus:

Description of suit	Period of Limitation	Time from which period begins to run
For specific performance of a contract	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused.

(emphasis supplied)

. According to Mr.Jamdar, learned counsel for the appellants, the present case is covered by the first part of Article 54, that is, "the date fixed for the performance".

9. The date of agreement between the plaintiff and Bhimrao was 12.12.1967. Supplementary agreement was executed on 5.11.1969 whereby the contents of the agreement dated 12.12.1967 were re-affirmed. Bhimrao died on 1st October, 1979 and the suit was filed on

4th April, 1981. The other relevant dates are as follows: Act of 1947 was amended and section 31 AB was inserted vide Maharashtra 41 of 1977 (for short "Amending Act of 1977") by section 3 thereof and the said amendment was brought into force on 29.8.1977. The period of limitation under the first part of Article 54, as submitted by the learned counsel for the appellant, started to run from 1st March, 1978 and got expired on 1st March, 1981, and, therefore, six months period for executing the sale deed got over on 1st March, 1978. The suit was filed on 4.4.1981 and, therefore, according to the appellants, the suit was barred by the law of limitation.

10. Section 31 of the Act of 1947 provides for restriction on alienation and sub-division of consolidated holdings allotted under this Act, to be transferred, whether by way of sale or by any other mode which sub-divides or creates fragmentation of consolidated holdings without the previous sanction of the Collector. The Collector, however, is conferred with the power to give sanction subject to such conditions as may be prescribed. Section 31 AA provides for validation of certain transfers, partitions and sub-division made before 15th November, 1965. Section 31 AB, with which we are concerned in the present appeal, provides for validation of certain

transfers of sub-division made on or after 15th November, 1965 and before commencement of the Amending Act of 1977 which was brought into force on 29.8.1977. Under this provision, no such transfer or sub-division in contravention of section 31 as it stood before 29.8.1977, made on or after 15.11.1965 and before 29.8.1977 shall be deemed to be void or ever to have become void merely on the ground that such transfer or sub-division is effected in contravention of the provisions of that section as it stood before such commencement and shall be deemed to be valid if such transfer or sub-division is in accordance with the provisions of section 31 as substituted by the Amending Act of 1977. Sub-section (2) of section 31 AB provides that for the purposes of this section, a certificate granted by the Collector, after holding such enquiry as he deems fit, that any transfer or sub-division of any land is valid under this section shall be final and conclusive evidence in that behalf, any holder may apply to the Collector for such certificate.

11. A conjoint reading of section 31AB read with old section 31 as also section 31 substituted by the Amending Act of 1977, in my opinion, clearly demonstrate that the requirement of sanction of the Collector for transfer, whether by way of sale or any

other mode as contemplated by clause (1) of section 31 AB, has not been deleted. It only provides that such transactions, which have taken place after the 15th day of November, 1965 shall be deemed to be valid if such transfer is in accordance with the provision of section 31 as substituted by the Amending Act of 1977. As a matter of fact this provision, though provides validation of transfers, further re-affirms that even for validation, certificate of the Collector would be necessary and the Collector is empowered under sub-section (2) of section 31 AB to issue certificate validating transfers after 15th day of 1965. In the present case, admittedly, the burden was on Bhimrao to obtain permission and sanction under section 31 of the Act of 1947 and within six months therefrom the parties had agreed to execute the sale deed. Bhimrao or his heirs did not either apply for sanction contemplated under old section 31 or applied for certificate contemplated under section 31 AB of the Act. There is nothing on record to indicate that Bhimrao had made any efforts to obtain such permission during his life time either before the Amendment Act of 1977 or after the amendment was brought into force and before he died on 1.10.1979. There is no dispute that the plaintiff had paid the entire consideration to Bhimrao and no further act had remained to be performed by him.

12. After the death of Bhimrao, defendant nos.1 to 5 filed suit bearing suit no.160 of 1980 for permanent injunction against the plaintiff and obtained ex parte ad-interim injunction and on the basis thereof allegedly dispossessed the plaintiff. It is not the case of either the appellants or defendant nos.1 to 5 that the plaintiff was not put in possession on execution of the agreement dated 12.12.1967. Keeping that in view, as rightly held by the appeal court, the plaintiff cannot be blamed for not seeking execution of the sale deed. That apart, looking to the bare provisions of section 31 AB and other relevant sections, it cannot be said that six months period as agreed in the agreement dated 12.12.1967 began to run from the date of the Amending Act of 1977 came into force, that is, 29.8.1977. In my opinion, even if it is assumed that by the Amending Act of 1977 such condition was waived, it is not open for the appellants to contend that period of limitation started to run on expiry of the period of six months from the date of amendment. Bhimrao in that case ought to have informed the plaintiff that requirement of obtaining sanction of the Collector for executing the sale deed was no more necessary in view of the amendment. As a matter of fact, it is clear from the evidence on record that neither the plaintiff nor the

defendants were aware about the amendment. Merely because the plaintiff did not plead that the respondents should take permission and then execute the sale deed or he did not pray for direction to obtain the permission in the plaint, it cannot be inferred that the plaintiff was aware of the amendment. The burden was put on Bhimrao to obtain sanction under the provisions of the Act, whether under section 31 or section 31 AB or at least he ought to have informed the plaintiff that such permission/sanction was no more required, calling upon him to execute the sale deed in view of the peculiar facts and circumstances of this case. In the circumstances the first submission of Mr. Jamdar must be rejected.

13. The jurisdiction to decree specific performance, under section 20 (1) of the Specific Relief Act, is discretionary. The court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. Clauses (a), (b) and (c) of sub-section (2) of section 20 enumerates the cases in which the court may not exercise discretion to decree specific performance. Clause (a) provides a case where the

terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendants, the court may properly exercise discretion not to decree specific performance. Clause (b) provides a case where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non performance would involve no such hardship to the plaintiff; and under clause (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance, the Court may not properly exercise discretion not to decree specific performance.

14. It is clear from bare perusal of the aforesaid provisions that the terms of the contract or the conduct of the parties at the time of entering into the contract or other circumstances under which the contract was entered into are such that the contract, though not voidable, give the plaintiff an unfair advantage over the defendants need to be taken into consideration while exercising the discretion to decree specific performance. Similarly, it is also

necessary to see whether the performance of contract would involve some hardship on the defendants which he did not foresee and that its non performance would involve no such hardship to the plaintiff.

15. The provisions of section 20 fell for consideration of the Apex Court in several cases. I would like to make reference to the cases which were relied upon by Mr. Jamdar, learned counsel for the appellants. The Supreme Court in **P.V. Joseph's son Mathew** (supra) while considering the provisions contained in section 20 of the specific performance has observed that "this section preserves judicial discretion to courts as to decreeing specific performance. The court should meticulously consider all facts and circumstances of the case. The court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff". In **A.C. Arulappan** (supra) the Supreme Court observed that "Granting of specific performance is an equitable relief, though the same is now governed by the statutory provisions of the Specific Relief Act, 1963. These equitable principles are nicely incorporated in Section 20 of

the Act. While granting a decree for specific performance, these salutary guidelines shall be in the forefront of the mind of the court. In **Manjunath Anandappa** (supra) the Supreme Court observed that "it was obligatory on the part of the plaintiff for obtaining a discretionary relief having regard to Section 20 of the Act to approach the court within a reasonable time. In that case, the suit for specific performance was filed after six years from the date of entering into agreement of sale. In **Malapali Munaswamy Naidu** (supra) the Supreme Court while considering the provisions of section 20 in paragraph 3 thereof considered the judgment of High Court and observed that "the High Court did not go into any other issue and having reversed the finding of the trial Court on the question as to the admissibility of agreement in evidence directed the suit to be decreed. The Supreme Court found that the High Court did not examine whether by reference to section 20 of the Specific Relief Act that was fit case for exercising discretion to decree specific performance or not. Making such observations the appeal was allowed and the matter was remanded for rehearing and its decision afresh by the High Court. Reliance was also placed on the judgment of the Karnataka High Court in case of **Smt.Ranganayakamma Vs. N.Govinda Narayan** (supra) wherein section 20(2)(b) Explanation and (3) was

considered to hold that whether the hardship is likely to be caused either by granting or refusing specific performance need to be taken into consideration.

16. It is thus clear that while dealing with a case for specific performance of the agreement, the court should examine whether, by reference to section 20 of the Specific Relief Act, that was fit case for exercising discretion to decree specific performance or not. The statutory guidelines incorporated in section 20 should be in the forefront of the mind of the Court. All facts and circumstances should be meticulously considered, keeping in view that the court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into judicial verdict. The court should take care to see that it is not used as an instrument of oppression to give an unfair advantage to the plaintiff.

17. In the present case besides inaction on the part of Bhimrao and his conduct, as discussed earlier, the conduct of the appellant at the time of entering into the contract with defendant nos.1 to 3 cannot be overlooked while appreciating the submissions of Mr.Jamdar, based on the provisions of section 20(2)(a) of the Specific Relief Act. Defendant nos.1 to 5 had

filed suit for injunction simplicitor bearing suit no.161 of 1980 and obtained exparte ad-interim injunction and, by virtue of the injunction obtained, forcibly dispossessed the plaintiff. In view of the dispossession, the plaintiff filed the present suit on 4th April, 1981. Admittedly, during pendency of this suit, the sale deed in favour of the appellants was executed by defendant nos.1 to 3 and in view thereof the plaintiff was forced to add the appellants as party defendants and prayed for decree of possession. Though the appellants claim that they were not aware of the suit and the agreement executed by Bhimrao in favour of the plaintiff, it is evident from the material on record that at the time of execution of the sale deed the plaintiff was present in the Sub-Registrar's office and before the sale deed was executed in favour of the appellant he gave application to the Sub-Registrar at Exhibit-57 bringing to his notice the agreement of 1967 as also the suit filed by the plaintiff against defendant nos.1 to 5 for specific performance of the said agreement. The Sub Registrar, however, did not take cognizance of the objections raised by the plaintiff and he registered the sale deed. The appeal court has considered this in paragraph 17 of the judgment and has rightly held that the appellants were aware about the agreement and the suit filed by the plaintiff for

specific performance of the said agreement. The manner in which the appellants and the defendants entered into the sale deed itself show that they were not fair and executed the sale deed only with a view to deprive the plaintiff of the suit property.

18. The appellants, in their civil application for additional evidence, claim that they made huge investment in development of the land and, therefore, discretionary relief of specific performance may not be granted. In my opinion, against the backdrop of the facts of this case, it cannot be accepted that some hardship would be caused to the defendants. Before making an investment they were aware of the 1967 agreement and the present suit filed by the respondent-plaintiff. There was no reason for the appellants to make huge investment, as alleged, in development of the land pending the present proceedings, particularly after they were added as party defendants in the suit. In my opinion, the appeal court has considered all the facts and circumstances meticulously. Keeping in view the guidelines incorporated in section 20 of the Specific Relief Act and considering the facts and circumstances of the present case it cannot be said that the plaintiff did not approach the court within reasonable time and, therefore, a decree for specific performance

cannot be refused to the plaintiff. As a matter of fact he had performed all the acts on his part. Having regard to the conduct of Bhimrao, defendant nos.1 to 5 and also the conduct of the appellants, in my opinion, the plaintiff is entitled to discretionary relief and not the defendants. Similarly, in the facts and circumstances of the case, the appellants cannot be stated to be bonafide purchasers of the suit property for value without notice. Merely because, lis pendens was not registered it cannot be said that the appellants were not aware of the agreement of sale between Bhimrao and the plaintiff and pendency of the suit filed by the plaintiff against defendant nos.1 to 5 when the sale deed was executed in their favour. It is clear from the evidence on record as discussed earlier that the appellants were aware about both. In the circumstances the appellants cannot be held to be bonafide purchasers for value without notice.

19. Insofar as the last submission of Mr.Jamdar that the agreement of sale executed by Bhimrao in favour of the plaintiff was without legal necessity also deserves to be rejected. The case of legal necessity though was considered by the trial Court, it was considered in the context of the point for determination that whether the defendants proved that Bhimrao had no capacity to execute the agreement of

sale. There is no pleading on the point of legal necessity. Defendant nos.1 to 5 have even not filed independent written statement and have simply adopted the written statement filed by the appellants. The appellants cannot contend that the agreement between Bhimrao and the plaintiff entered into in 1967 was without legal necessity. Defendant nos.1 to 5 have not led any evidence in support of this contention of the appellants. In the circumstances this appeal fails and is dismissed as such. However, there shall be no orders as to costs.

20. At this stage Mr.Jamdar, learned counsel for the appellants prayed for stay of this judgment for eight weeks to enable the appellants to approach the Supreme Court. Though Mrs.Baxi, learned counsel for the respondents opposed the prayer I am inclined to grant stay as prayed for by Mr.Jamdar hence I pass the following order:

. This judgment shall remain stayed for a period of eight weeks from today. No further extension of the stay shall be granted on any ground whatsoever. In the meanwhile it is open for the respondents to initiate execution proceedings. However, for a period of eight weeks the sale deed be not executed and the possession also be not given to the plaintiff.

(D.B.Bhosale, J.)